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IQAIR NORTH AMERICA, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

IQAIR NORTH AMERICA, INC., a California corporation,

Plaintiffs,

vs.

CLIMATERIGHT, LLC, an Ohio limited liability company, MIDWEST EQUIPMENT SALES, LLC, a Ohio limited liability company, and JAMES CLINE, an individual,

Defendants.

CASE NO.

COMPLAINT FOR:

(1) TRADEMARK INFRINGEMENT, 15 U.S.C. § 1114(1);;
(2) FEDERAL TRADEMARK DILUTION, 15 U.S.C. § 1125(c);
(3) CALIFORNIA TRADEMARK DILUTION, CAL. BUS. & PROF. CODE § 14330;
(4) UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200 ET SEQ. and;
(5) UNFAIR COMPETITION UNDER CALIFORNIA COMMON LAW.

DEMAND FOR JURY TRIAL

For its complaint against defendants ClimateRight, LLC, Midwest Equipment Sales, LLC, and James Cline (collectively "Defendants"), plaintiff IQAir North America, Inc. ("IQAir North America" or "IQAir") alleges as follows:

JURISDICTION AND VENUE

1. This is an action for trademark infringement in violation of 15 U.S.C. Sections 1114 & 1125, unfair competition under Cal. Bus. & Prof. Code Sections 17200 et seq. and the common law of California. This Court has subject matter jurisdiction pursuant to at least 15 U.S.C. § 1121(a), 28 U.S.C. § 1338(a) and (b).

2. This court has supplemental jurisdiction over the claims in this complaint that arise under state statutory law and the common law of the State of California pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

3. This court has personal jurisdiction over Defendants because Defendants have conducted systematic and continuous business within California and because they have directed their unlawful business activities towards California and have caused injury to a California resident within California.

4. Venue is proper under at least 28 U.S.C. §1391(b)(2) and/or (b)(3) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district. Defendants have performed acts in this district that constitute trademark infringement and unfair competition by selling products in this district that infringe upon IQAir's registered trademark.

PARTIES

5. IQAir North America is a corporation formed under the laws of California and its principal place of business is located in La Mirada, California. IQAir North America is part of the IQAir family of companies.

6. Upon information and belief, ClimateRight, LLC ("ClimateRight") is a division of Midwest Equipment Sales, LLC. Upon information and belief,

ClimateRight is a limited liability company organized under the laws of Ohio and is located at 777 Manor Park Drive, Columbus, Ohio 43228.

7. Upon information and belief, Midwest Equipment Sales, LLC ("Midwest") is a limited liability company organized under the laws of Ohio and is located at 2237 Eakin Road, Columbus, Ohio 43223.

8. Upon information and belief, James Cline ("Cline") is an individual and the direct or indirect owner and alter ego of ClimateRight and/or Midwest. Upon information and belief, Mr. Cline resides in Ohio but does business in this judicial district including but not limited to soliciting business, selling and offering for sale products that infringe upon IQAir's trademark.

9. Upon information and belief, each Defendant was and is the agent, alter ego, co-conspirator, joint venture of each of the other Defendants and the acts of each Defendant was and is within the scope of such relationships. In doing the acts or failing to act as alleged in the Complaint, each Defendant acted with knowledge, permission and consent of the other Defendants.

10. Upon information and belief, each of the Defendants aided and abetted each of the other Defendants in the acts or omissions alleged in the Complaint and induced the infringement as alleged in the Complaint.

FACTUAL BACKGROUND

11. IQAir specializes in technology including without limitation air purifying units and air filters for commercial, residential, medical and industrial applications that help protect people from airborne pollutants. IQAir implements this technology in residential, commercial and public buildings throughout the United States, including in this district, and internationally.

12. IQAir's manufacturing and production facility is located in Switzerland. By using very high quality components, a dedicated team of skilled craftsmen and women, and state-of-the-art manufacturing processes, IQAir is able to

build very high quality air purifying products which are sold in the United States, including in this district.

13. IQAir is a family company created by the Hammes family with roots going back to 1963 when Manfred Hammes and his brother Klaus Hammes, a mechanical engineer, introduced a simple filter system for residential users in Germany. The company was later relocated to Switzerland.

14. By the Spring of 1998, the IQAir system HealthPro® Plus was manufactured at the Swiss manufacturing facility. At least as early as 2000, IQAir purifiers became available in the United States.

15. IQAir's products have received numerous awards and acclaim in the industry. In 2002, IQAir became the first room air cleaner to receive a H12/13 certification for its HyperHEPA® filters, typically available in multimillion dollar cleanroom filtration systems.

16. Consumers Digest Magazine has repeatedly named the IQAir HealthPro® Plus as the "Best Buy" for home air purifiers in the Premium category.

17. ICLEEN Entwicklungs- und Vertriebsanstalt für Umweltprodukte, a Liechtenstein corporation, is the owner by assignment of United States Trademark Registration No. 3,343,313 for the mark IQAIR for use at least in connection with air purifying units and air filters for commercial, domestic, medical and industrial applications in International Class 11. This registration issued on November 27, 2007, and is based on first use in commerce on March 18, 1996. This registration is valid, exists on the Principal Register of the United States Patent and Trademark Office ("USPTO") and is incontestable pursuant to Section 15 of the Lanham Act (15 U.S.C. Section 1065). A copy of the registration is attached as Exhibit A. IQAir North America is the exclusive licensee of the IQAir mark in North America.

18. IQAir has been selling air purifying units, air filters, and replacement filters in the United States for many years. Over that time, IQAir has sold millions of dollars worth of these products. IQAir has extensively promoted its air purifying

product nationwide through advertisements, packaging, on its Internet web site, and in social media.

19. IQAir has been careful, skillful and diligent in the conduct of its business and has maintained uniform standards of high quality in its goods. As a result of these efforts, the IQAIR® trademark has acquired public acceptance and reputation, thereby creating public goodwill that inures to IQAir's benefit.

20. Upon information and belief, notwithstanding and with full knowledge of IQAir's business and IQAir's rights in the IQAIR® trademark, Defendants have conducted business and have offered for sale and sold, in this district and elsewhere, air purifier products using a mark that is confusingly similar to the IQAIR® trademark. Defendants have and are offering for sale nationwide, in this district and elsewhere in the United States, air purifier products that directly compete with the IQAir air filters. Defendants are selling these products using the mark "iAirQ" which is confusingly similar to IQAir's IQAIR® trademark.

21. Defendants' use of a mark that is confusingly similar to IQAir's mark has been and is without the consent or authorization of IQAir.

22. Defendants publicly offer or purport to offer air purifier products using the "iAirQ" mark. For example, Defendants control and operate an interactive website, www.climateright.com, in which customers from the United States, including customers located in this district of California, can directly purchase the infringing air purifier products from Defendants. Defendants also offer for sale and sell air purifier products on the nationwide sales platform Amazon.com.

23. Upon information and belief, Defendants deceive consumers into believing they are purchasing original IQAir air purifier products when in fact consumers are actually purchasing products sold by Defendants. Upon information and belief, consumers are likely to mistakenly believe that ClimateRight and/or the "iAirQ" products are sponsored by, authorized by, approved by, or otherwise affiliated with IQAir when in fact, they are not.

FIRST CLAIM FOR RELIEF

Infringement of Federally Registered Trademarks

24. IQAir re-allege and incorporates by reference each of the allegations of the paragraphs set forth above as though fully set forth herein.

25. The IQAIR® registered mark is inherently distinctive, as evidenced by the registration on the Principal Register of the USPTO, its continued use in commerce by IQAir, and acknowledgement by the USPTO of the mark's incontestability pursuant to Section 15 of the Lanham Act.

26. Defendants' use of a confusingly similar mark in this district and elsewhere, in connection with the sale of air purifier products, is likely to cause consumer confusion that Defendants' goods and services emanate from or are sponsored or authorized by IQAir.

27. On information and belief, notwithstanding and with full knowledge of IQAir's business and rights in the IQAIR® trademark, Defendants adopted and continue to use a mark that is confusingly similar to the IQAIR® registered mark with complete disregard of IQAir's rights and with the intent to trade on the goodwill that IQAir has created.

28. The above-described acts of Defendants constitute infringement of a registered trademark in violation of 15 U.S.C. Section 1114, in that Defendants have used in connection with their goods a trademark that is likely to cause confusion or mistake or to deceive the public that Defendants' goods or services are authorized, sponsored by, or affiliated with IQAir, and Defendants have caused such goods to enter into interstate commerce that may be regulated by Congress.

29. IQAir has been damaged and is likely to be damaged in the future by Defendants' infringement by reason of the likelihood that prospective purchasers and purchasers of Defendants' goods will be confused as to the source, sponsorship, or affiliation of Defendants' goods.

30. Defendants have unfairly profited from the acts alleged in this Complaint and will be unjustly enriched in the future unless and until such conduct is permanently enjoined.

31. By reason of Defendants' acts alleged herein, IQAir has suffered damages including damages to its business goodwill.

32. By reason of Defendants' acts alleged herein, IQAir has suffered and will suffer irreparable harm in the future unless and until Defendants' conduct is permanently enjoined.

33. Defendants' acts alleged herein were willful and taken in conscious disregard of IQAir's rights.

34. This is an exceptional case and IQAir is entitled to an award of its attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

Trademark Dilution, 15 U.S.C. § 1125(c)

35. IQAir re-alleges and incorporates by reference each of the allegations of the paragraphs set forth above as though fully set forth herein.

36. The IQAir mark is distinctive, well known and famous.

37. Defendants are diluting the distinctiveness of the IQAir mark by marketing and selling goods using a mark that is confusingly similar to the famous and distinctive IQAir mark.

38. Upon information and belief, Defendants engaged in the conduct alleged herein willfully, with full knowledge of IQAir's business and rights in the IQAIR® trademark, intending to trade on IQAir's reputation and/or to cause dilution of the famous and distinctive IQAir mark.

39. The acts alleged violate 15 U.S.C. §1125(c).

40. Defendants have unfairly profited from the acts alleged herein and will be unjustly enriched in the future unless and until such conduct is permanently enjoined.

41. By reason of Defendants' acts alleged herein, IQAir has suffered damages including damages to its business goodwill.

42. By reason of Defendants' acts alleged herein, IQAir has suffered and will suffer irreparable harm in the future unless and until Defendants' conduct is permanently enjoined.

43. This is an exceptional case and IQAir is entitled to an award of its attorneys' fees, costs and any other recoverable expenses.

THIRD CLAIM FOR RELIEF

California Trademark Dilution, California Business & Professions Code § 14330

44. IQAir re-alleges and incorporates by reference each of the allegations of the paragraphs set forth above as though fully set forth herein.

45. The IQAir mark is distinctive, well known and famous.

46. Defendants are diluting the distinctiveness of the IQAir mark by marketing and selling inferior air purification products using a mark that is confusingly similar to the famous and distinctive IQAir mark.

47. Upon information and belief, Defendants are engaged in the conduct alleged herein willfully, with full knowledge of IQAir's business and rights in the IQAIR® trademark, intending to trade on IQAir's reputation and/or to cause dilution of the famous and distinctive IQAir mark.

48. Defendants' acts alleged herein violate California Business and Professions Code § 14330.

49. Defendants have unfairly profited from the acts alleged herein and will be unjustly enriched in the future unless and until such conduct is permanently enjoined.

50. By reason of Defendants' acts alleged herein, IQAir has suffered damages including damages to its business goodwill.

51. By reason of Defendants' acts alleged herein, IQAir has suffered and will suffer irreparable harm in the future unless and until Defendants' conduct is permanently enjoined.

52. This is an exceptional case and IQAir is entitled to an award of its attorneys' fees, costs and any other recoverable expenses.

FOURTH CLAIM FOR RELIEF

State Statutory Unfair Competition

53. IQAir re-alleges and incorporates by reference each of the allegations of the paragraphs set forth above as though fully set forth herein.

54. The Court has jurisdiction over this Claim pursuant to 27 U.S.C. Section 1367.

55. Defendants' use of a mark that is confusingly similar to IQAir's mark in conjunction with Defendants' distribution, and sale of products as complained of herein is likely to, and is intended to, cause confusion to purchasers and potential purchasers of IQAir's products, and to unfairly compete with IQAir.

56. On information and belief, Defendants' use of a mark that is confusingly similar to IQAir's mark, was done willfully, with full knowledge of IQAir's business and rights in the IQAIR® trademark.

57. By the acts complained of herein, Defendants have engaged in unfair competition as contemplated under Cal. Bus. & Prof. Code Sections 17200 *et seq*.

58. Because of Defendants' acts complained of herein, IQAir has been actually damaged and suffered irreparable harm, and will continue to suffer irreparable harm until enjoined by order of this Court.

59. Because of Defendants' acts complained of herein, Defendants have been unjustly enriched and will continue to be unjustly enriched until enjoined by order of this Court.

FIFTH CLAIM FOR RELIEF

State Common Law Unfair Competition

60. IQAir re-alleges and incorporates by reference each of the allegations of the paragraphs set forth above as though fully set forth herein.

61. The Court has jurisdiction over this Claim pursuant to 27 U.S.C. Section 1367.

62. By its acts complained of herein, Defendants have engaged in unfair competition under the common law of the State of California.

63. Upon information and belief, Defendants' acts complained of herein were undertaken willfully, with full knowledge of IQAir's business and rights in the IQAIR® trademark, and with the intention of causing confusion, mistake and deception.

64. Because of Defendants' acts complained of herein, IQAir has suffered and will continue to suffer irreparable harm, and Defendants have unfairly profited and will continue to be unjustly enriched, to an extent not presently ascertained, which irreparable harm and unjust enrichment will continue until enjoined by order of this Court.

65. Defendants' conduct is and has been intentional, willful, malicious, oppressive, and in reckless disregard of IQAir's rights, entitling IQAir to an award of punitive damages.

PRAYER

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. For a temporary and permanent injunction prohibiting Defendants from (a) further infringing IQAir's mark pursuant to at least 15 U.S.C. Sections 1116 and 1125, and Cal. Bus. & Prof. Code Sections 17200 *et seq.*, (b) requiring Defendants to deliver up to IQAir for destruction any and all products that have been purchased or sold in conjunction with Defendants' use or infringement of the IQAir mark and that are in Defendants' possession, custody or control, along with any tooling or

other items of manufacture, the sole purpose of which is to manufacture such infringing products, as well as any promotional literature and packaging that displays or promotes such infringing products, pursuant to 15 U.S.C. Section 1118 and Cal. Bus. & Prof. Code Sections 17200 *et seq.*; and (c) from using any infringing mark on any social media site and/or website owned, maintained or controlled by or for the benefit of Defendants, or by any agent of Defendants, including but not limited to the website www.climateright.com.

2. For an accounting by Defendants, actual damages sustained by Plaintiffs, and all profits realized by Defendants by reason of their infringement of the IQAir mark, and that such damages and profits be trebled and enhanced to the maximum amount provided by law, all as pursuant to 15 U.S.C. Section 1117(a);

3. For disgorgement of profits and restitution;

4. For punitive damages under California common law;

5. For prejudgment interest on all damages pursuant to 15 U.S.C. Section 1117(b), under California law, and any other applicable basis.

6. For all of Plaintiffs' costs and expenses of this Action, including attorneys' fees; and

7. For such other or further relief as the Court may deem just and proper.

DATED: April 24, 2017

Respectfully submitted,
QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Joseph M. Paunovich
Joseph M. Paunovich
Richard Doss
Attorneys for Plaintiffs,
IQAir North America, Inc.

DEMAND FOR JURY TRIAL

Plaintiff IQAir North America, Inc., pursuant to Federal Rule of Civil Procedure 38, hereby demand a trial by jury of all issues so triable.

DATED: April 24, 2017

Respectfully submitted,
QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Joseph M. Paunovich
Joseph M. Paunovich
Richard Doss
Attorneys for Plaintiffs,
IQAir North America, Inc.

EXHIBIT A

Int. Cls.: 9 and 11

Prior U.S. Cls.: 13, 21, 23, 26, 31, 34, 36 and 38

Reg. No. 3,343,313
Registered Nov. 27, 2007

United States Patent and Trademark Office

TRADEMARK
PRINCIPAL REGISTER

IQAIR

CLINIX GMBH (SWITZERLAND CORPORATION)
INDUSTRIESTRASSE 36
9400 RORSCHACH, SWITZERLAND

FOR: MEASURING AND ANALYZING INSTRUMENTS, NAMELY, ELECTRONIC OR COMPUTERIZED MEASURING AND ANALYZING INSTRUMENTS FOR GASES, PARTICLES OR LIQUID AIRBORNE POLLUTANTS IN AIR, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-1-1996; IN COMMERCE 3-18-1996.

FOR: AIR PURIFYING UNITS AND AIR FILTERS FOR COMMERCIAL, DOMESTIC, MEDICAL AND INDUSTRIAL APPLICATIONS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 3-1-1996; IN COMMERCE 3-18-1996.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,364,111.

SER. NO. 77-127,869, FILED 3-11-2007.

ALLISON HOLTZ, EXAMINING ATTORNEY